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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Deployment of Wireline Services Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access To Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

COMMENTS OF DSLnet COMMUNICATIONS, LLC

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Comments of DSLnet
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SUMMARY

DSLnet urges the Commission to adopt "minimum requirements for loop provisioning as a matter of federal law." Absent nationwide provisioning standards, competitive carriers will continue to be impaired in their ability to provide service. Standards should cover the entire loop provisioning process, from pre-ordering through post-delivery, and should be applicable to both voice-grade loops and high-capacity, digitally-enabled loops. DSLnet suggests specific performance standards that the Commission could use as the starting point of its analysis concerning timeliness of loop provisioning, loop information, sequential processing of collocation and UNE orders and maintenance and repair.

The Commission should establish standards to ensure that CLEC are able to obtain conditioned loops at forward looking prices. The Commission should also establish federal penalties for ILEC noncompliance with performance standards. The amount of the penalty should be self enforcing, such as automatic reductions in UNE prices directly related to the length of the delay.

These performance standards and penalties will help assure that ILECs provide loops and supporting services in a manner that will achieve the pro-competitive goals of the Act.

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COMMENTS OF DSLnet COMMUNICATIONS

DSLnet Communications, LLC ("DSLnet"), by undersigned counsel, respectfully submits these comments to the Federal Communications Commission ("FCC" or "Commission") in response to the "Association for Local Telecommunications Services' Petition for Declaratory Ruling: Broadband Loop Provisioning ("ALTS Petition")". DSLnet, an emerging entrant into the

competitive local exchange market, provides high-speed data communications and Internet access services using digital subscriber lines, ("DSL"), technology to small and medium sized businesses. DSLnet utilizes the networks of incumbent local exchange carriers ("ILECs") in the provisioning of DSLnet's services.

I. INTRODUCTION

DSLnet applauds the Commission's ongoing efforts to implement the pro-competitive provisions of the Telecommunications Act of 1996 ("1996 Act") and to ensure that all Americans reap the benefits of competition that will result from the nondiscriminatory access to network elements. DSLnet strongly supports, and urges the Commission to adopt, the ALTS proposal for "minimum requirements for loop provisioning as a matter of federal law," for both voice-grade loops and high-capacity, digitally-enabled loops. The standards established by the Commission should cover each stage of the loop provisioning process from pre-ordering through post delivery. The Commission has already developed a substantial record on which to base these much needed standards.

DSLnet joins ALTS in seeking a Commission ruling enabling CLECs, in every region, to order loops in a manner that will enable CLECs to immediately provide service at the time that their collocated equipment becomes operational. The Commission has previously noted the competitive harm suffered by CLECs forced to delay market entry. Current ILEC processes prohibiting loop

delivery concurrent with collocated equipment going on line unnecessarily delays market entry and substantially increases CLEC administrative and financial burdens. Similarly, ILEC failure to inform CLECs, prior to collocation, whether a central office is served by high-capacity facilities not only delays market entry but also unnecessarily wastes CLEC financial resources. Such results are contrary to the pro-competitive, non-discriminatory goals of the 1996 Act and the Commission should move swiftly to end these unnecessary delays.

As a facilities-based provider of advanced services, DSLnet's ability to provide services is strongly impacted by ILEC policies, procedures and practices which inhibit access to unencumbered copper facilities. Thus, DSLnet wholeheartedly supports ALTS' request that the Commission clarify that ILECs are required to take steps to ensure continued access to copper by "swapping" or a "work-around." DSLnet also urges the Commission to establish standards for ILEC provisioning and conditioning of xDSL-capable loops consistent with TELRIC pricing principles.

II. THE COMMISSION SHOULD ESTABLISH MINIMUM STANDARDS APPLICABLE TO EACH STAGE OF THE LOOP PROVISIONING PROCESS, FROM PRE-ORDERING THROUGH POST-DELIVERY, FOR PROVISIONING OF BOTH VOICE-GRADE AND HIGH-CAPACITY, DIGITALLY-ENABLED LOOPS.

DSLnet strongly supports, and urges the Commission to adopt, the ALTS proposal for

"minimum requirements for loop provisioning as a matter of federal law."[1] The Commission has extended considerable effort in establishing the scope and pricing of equitable non-discriminatory access to unbundled network elements ("UNEs") without which requesting carriers will be impaired in their efforts to provide the service that they seek to offer. However, having established "what" UNEs must be provided, it is imperative that the Commission establish "when" these UNEs must be provided. Absent such a determination, CLECs will continue to be "impaired" in their efforts to provide the service that they seek to offer if they are unable to procure loops in a timely and efficient manner. DSLnet agrees with ALTS that these requirements should be applicable to both voice-grade loops and high-capacity, digitally-enabled loops. The standards established by the Commission should cover each stage of the loop provisioning process from pre-ordering through post-delivery.

The Commission has already developed a substantial record on which to base these much needed loop provisioning standards. The Commission should incorporate into this proceeding the record developed in its evaluation of regional Bell Operating Companies applications for Section 271 authority to provide in-region, interLATA authority. The standards that have originated from those proceedings, were developed following review and comment from the United States Department of Justice and various state commissions. Additionally, other interested parties, both

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[1] Association for Local Telecommunications Services Petition for Declaratory Ruling: Braodband Loop Provisioning (May 17, 2000)("*ALTS Petition*") at p. 20.

incumbents and competitive providers posited various views and recommendations that were taken into consideration by the Commission in determining whether the applicants had met the requirements of the Act. The Commission should now move forward and establish much needed standards for the timely provisioning of UNE's. Such standards will hasten the development of broad-based competitive entry as envisioned in the 1996 Act.

Delay at any stage of the provisioning process delays competitive entry. DSLnet urges the Commission to consider the following provisioning standards applicable to each stage of the loop provisioning process as a starting point for the Commission's analysis in the establishment of feasible and effective provisioning. DLSnet does not intend to foreclose the possibility that more stringent standards could be developed in this proceeding.

1. **Pre-Ordering**

   Application to Application Interface

   Parsed Customer Service Records ("CSR") provided in parity plus ten seconds.

2. **Loop Make-up Information**

   Mechanized Loop Qualification – Parity with retail plus four seconds.

   Manual Loop Qualification – 95% of requests completed within 72 hours.

3. **Ordering**

   Return of 95% of mechanized order confirmation and rejection notices within two hours of submission to BOC, and 95% of

manually processed order confirmation and rejection notices under ten lines within 24 hours of submission.[2]

4. **Jeopardy Notices**

Timeliness of notice of jeopardy of service order request where miss is known in advance of due date (missed commitment with new date/time).

100% within 24 hours before due date with facilities.
100% within 48 hours before due date without facilities.

5. **Provisioning**

Average Completion Intervals

ILEC must provision 95% of xDSL orders within 3 business days (for 1-10 loops), 7 business days (for 11-20 loops) and10 business days (for 20+ loops).

Hot Cuts

95% of orders of ten loops or fewer to be completed within one hour.

Each stage of the loop provisioning process is addressed in turn below.

A. Pre-Ordering

In the context of evaluating RBOC Section 271 applications, the Commission has required applicants to demonstrate that "it provides requesting carriers access that enables them to perform these functions in substantially the same time and manner as [the BOC's] retail operations."[3] For

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[2] For xDSL services, the applicable timeframe should be 72 hours.

[3] *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New*

those pre-ordering functions that lack a retail analogue, the BOC "must provide access that affords an efficient competitor a meaningful opportunity to compete."[4] The standards proposed herein are consistent with the standards adopted by the Commission.

1. Application to Application Interface

As the Commission has previously noted "providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC."[5] One of the major problems that CLECs have had in interfacing with the BOC's pre-ordering functionality has been in regard to "parsing" pre-ordering information. [6] As the Commission has observed:

> [i]n this regard, the BOC must enable competing carriers to transfer pre-ordering information electronically to the BOC's ordering interface or to the carriers' own back office systems, which may require "parsing" pre-ordering information into identifiable fields. Without an integrated system, a competing carrier would be forced to re-enter pre-ordering information manually into an ordering interface, which leads to additional costs and delays, as well as a greater risk of error. This

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York, Memorandum Opinion and Order, CC Docket No. 99-295, 15 F.C.C.R. 3953. (rel. Dec. 22, 1999) at ¶129 ("*BANY Order*").

[4] *Id.*

[5] *Id.*

[6] *In the Matter of Application of SBC Communications, Inc., et al, for Provision of In-Region InterLATA Services in Texas,* CC Docket No. 00-65, AT&T Comments at 51-53 (April 26, 2000)("*AT&T SBC 271 Comments*"); MCI WorldCom Comments at 9 (April 26, 2000)("*WorldCom SBC 271 Comments*").

> lack of integration would place competitors at a competitive disadvantage and significantly impact a carrier's ability to serve its customers in a timely and efficient manner.[7]

CLECs in Texas continue to experience this problem as SBC Communications ("SBC") has failed to provide pre-ordering information in a parsed format that would allow the information to be automatically populated into EDI ordering fields.[8] This failure has predictably led to excessive CLEC order rejections.[9] The need for the Commission to adopt the recommended standards is further revealed by the fact that many BOC retail divisions do not have to perform parsing in order to place an order.[10] Again, the record is replete with information that the Commission can rely on in establishing the proper standard. [11]

2. Loop Make-up Information

DSLnet fully supports ALTS' request that the Commission require ILECs to provide loop information to CLECs prior to collocation. As ALTS noted in its petition, CLECs need to know

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[7] *BANY* Order at ¶ 137.

[8] *AT&T SBC 271 Comments* at p. 51; *WorldCom SBC 271 Comments* at p. 6.

[9] *AT&T SBC 271 Comments* at p. 52.

[10] *WorldCom SBC 271 Comments* at p. 13.

[11] The Commission applied the NY PSC standard for parsed CSRs in evaluating Bell Atlantic's performance in this area. *See BANY Order*, ¶ 152.

whether a central office is served by high-capacity facilities prior to collocation.[12] This information is critical in order for a CLEC to effectively plan their network deployment and avoid unnecessary delays and expenditures. If a CLEC is unable to determine that there are no interoffice facilities available until after it finishes collocation and orders high-capacity facilities, which may take 6 to 8 months, the CLEC will be forced to locate an alternative provider and/or remove its equipment. Such delays, like the delays associated with provisioning collocation and UNEs, exemplify the significant barriers to entry that will remain in place absent a Commission ruling mandating that such information be granted to the CLEC upon request. If ILECs provide relevant loop information to CLECs prior to collocation, such delays can be prevented.

"If new entrants are to have a meaningful opportunity to compete, they must be able to determine during the pre-ordering process as quickly and efficiently as can the incumbent, whether or not the loop is capable of supporting xDSL-based services."[13] This statement reflects the need of CLECs to obtain detailed information about available loops. CLECs "often seek to 'pre-qualify' a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether

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[12] ALTS Petition at 10.

[13] *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147 *et al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd. 24012, 24038 (1998)("*Advanced Services Order*").

the loop, either with or without removal of the impediments, can support a particular service."[14] Unfortunately, notwithstanding the Commission acknowledgment of the critical nature of loop make-up information if CLECs are to have a meaningful opportunity to compete, there are no federal guidelines for measuring ILEC provisioning of this information following a CLECs request.

The New York Public Service Commission has adopted two sets of performance measures that the Commission may want to examine in developing federal guidelines. The first, PO-1-06, tracks average response time for mechanized loop qualification, with the standard being parity with retail but not more than 4 seconds.[15] The second, PO-8-01 tracks the average response time for manual loop qualification, and the standard is 95% completed within 72 hours.[16] The Commission should adopt these standards for provision of loop qualification information.

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[14] *BANY Order* at ¶ 140, fn. 419.

[15] *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in Part Petitions for Reconsideration and Clarification, Case 97-C-0139 (NY PSC Feb. 16, 2000), p. 19 (*NYPSC Order #2*).

[16] *Id.*

B. Ordering

1. Order Rejects

As ILEC ordering systems become more mechanized, the Commission has ceased to focus on flow-through rates as an indica of parity in the ordering stage.[17] However, data from the SBC application suggests, that flow-through may still be a big problem. In its petition to the Commission, Sprint indicated that reject rates for orders sent over the SBC's electronic interfaces have reached a percentage plateau in the mid-20s.[18] Sprint also demonstrated that unlike Bell Atlantic's reject rates in New York, where the Commission determined that the broad range of individual carrier reject rates reflected the capabilities and care of the CLEC, the data strongly indicated that SBC did not have analogous data to indicate that its reject rates were also a result of the capabilities and care of the individual CLECs.[19]

Thus, given the prevalence of high rejection rates and low flow-through rates, timely delivery of rejection notices becomes all the more critical. ILEC failure to timely return rejection notices

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[17] "Flow-through" refers to orders that are transmitted electronically through the gateway and accepted into the ILEC's back office ordering systems without manual intervention. *BANY* Order at ¶ 160, fn. 488. The flow-through rate often "serves as a yardstick to evaluate whether an incument LEC's OSS is capable of handling reasonably foreseeable commerical volumes of orders." *Id.* at ¶ 162, fn. 496.

[18] CC Docket No. 00-65, April 26, 2000 Petition to Deny of Sprint Communications Company, L.P. at p. 39 (*Sprint SBC 271 Comments*).

[19] *Id.* at 41.

serves to hinder competitive providers as "new entrants cannot correct errors and resubmit orders until they are notified of their rejection."[20] AT&T has observed that the situation is compounded in Texas where not only are there high rejection rates, but more than a third of SBC's rejection notices are manually typed by a SBC representative before they are sent to CLECs, a process that leads to excessive delays.[21] As MCI WorldCom noted:

> Orders that are rejected take far longer to complete especially when rejects are manually processed. SWBT takes more than six hours on average to manually process the rejects which are then returned to the CLECs. The CLECs must in turn determine the problem with the initial order, correct that problem - which often requires significant work by the CLEC and re-transmit the order. Even the re-transmitted order is likely to take longer to process than a typical order. This is because SWBT manually processes all supplemental orders to correct manually processed rejects. Thus, SWBT's high reject rate, high level of manual processing of rejects, and slow return of those rejects pose a substantial barrier to CLEC entry.[22] This excessive delay is plainly unnecessary. SBC's retail ordering systems possess capabilities that allow for all but a small percentage of errors to be detected electronically before the order is even submitted.[23]

Strict timing metrics coupled with enforcement mechanisms will provide ILECs the incentive to process fully electronic rejects.

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[20] *Id.* at p. 43 *citing Application of BellSouth Corp. to Provide In-Region, InterLATA Services in South Carolina*, 13 FCC Rcd. 539, ¶ 117 (1997).

[21] *AT&T SBC 271 Comments* at p. 49.

[22] *WorldCom SBC 271 Comments*, p. 28 (citations omitted).

[23] *AT&T SBC 271 Comments*, p. 50.

2. Jeopardy Notices

ILEC notification to the CLEC that a service installation or repair due date will be missed is called a "jeopardy notice."[24] The potential impact on new providers, of missed installation and repair appointments is significant, as consumers will assign blame for such poor customer service to the new provider, not the incumbent. In evaluating Bell Atlantic's §271 Application the Commission recognized that "a system designed to deliver jeopardy notification well in advance of missed appointments would lessen the impact of such misses,"[25] but determined that providing access to such information "in substantially the same time and manner as Bell Atlantic's retail operations can access such information . . ."[26] met the requirements of the Act. A subsequent NY PSC proceeding found that CLECs did not have real-time access to the order information, that CLECs had to rely on faxes to obtain information, and that the information was not being updated as frequently as Bell Atlantic had stated.[27] Additionally, in cases where Bell Atlantic did provide jeopardy notices, it did not do so on a uniform basis. Bell Atlantic was providing those notices via telephone. The notices were routed through a dispatch center to an operations center. The

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[24] *BANY Order* at ¶ 184.

[25] *Id at* ¶185.

[26] *Id*

[27] *NY PSC Order II*, p. 13.

operations center was the one that notified the CLEC.[28] Bell Atlantic acknowledged delay in the system. The NY PSC directed Bell Atlantic to address the feasibility of modifying its procedures to expedite the flow of jeopardy notices to CLECs and called for the parties to work together to develop "mutually acceptable procedures for the timely provision of jeopardy notices."[29]

Given the experiences CLECs in NY and Texas, the determinations of the NY PSC, and the acknowledged importance and feasibility of ILEC provisioning of jeopardy notices to CLECs, the Commission should establish a separate performance metric for delivery of jeopardy notices that will allow the CLEC to notify the end user well in advance that a due date may be missed.

DSLnet recommends that the Commission consider the "Due Date Minus Two" procedure Bell Atlantic applies to provide jeopardy notices in regard to hot cuts. Under the procedure, Bell Atlantic is required to check for a competing carrier's dial tone two days before a hot cut date and promptly notify the carrier if there is a problem.[30] This procedure, in the words of the NY PSC, "allows the [competitive LEC] the opportunity to notify its customer of potential delay and, if necessary, postpone the due date."[31] The Commission commended Bell Atlantic for developing this

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[28] *Id.* at p. 14.

[29] *Id.*

[30] *BANY Order* at ¶ 186.

[31] *Id.*

jeopardy process for hot cuts and found "that it appears to be critical to the proper functioning of the hot cut process."[32] There is no reason why ILECs should not implement a similar jeopardy process for non-hot cut orders, especially since such a process is equally critical for those orders.

C. Provisioning

1. Average Completion Intervals

The Commission has found that Average Installation Interval data is critical to determining if "a BOC provides equivalent access to OSS because such data are 'direct evidence of whether [a BOC] takes the same time to complete installations for competing carriers as it does for [itself], which is integral to the concept of equivalent access.'"[33] With regard to evaluating a BOC's provision of xDSL capable loops, the Commission has held that it "would expect a BOC to demonstrate, preferably through the use of state or third-party verified performance data, that it provides xDSL capable loops to competitors either in substantially the same average interval in which it provides x-DSL capable service to its retail customers or in an interval that offers competing carriers a meaningful opportunity to compete."[34]

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[32] *Id.*

[33] *Id.* at ¶ 193.

[34] *BANY Order* at ¶ 335.

Intrinsically tied into the average provisioning interval is data pertaining to missed due dates. In fact, the Commission has urged consideration of the average completion interval in context with missed due dates because in some circumstances the completion interval may not be, on its own, an accurate indicator of whether a BOC is providing loops in a timely manner.[35] In Texas, SBC's performance in regard to completion intervals and missed due dates was out of parity for a significant amount of time.[36] Thus, CLEC end users suffered both delays in obtaining the requested DSL service as well as the frustration of missed appointments.

Once again, this situation demonstrates how across-the-board standards will further the pro-competitive goals of the act. Requiring an ILEC to provision loops within a certain defined interval will help ensure that appointments are not missed, because the ILEC could ill afford the provisioning delay that a missed due date would cause.

2. Hot Cuts

A vital facet of a ILECs's provisioning of unbundled loops is through "the use of coordinated conversions of active customers" from the ILEC to the competing carriers.[37] This process, known as a "hot cut," entails manually disconnecting the customer's loop in the ILEC's central office and

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[35] *Id.* at ¶ 289.

[36] CC Docket 00-65, Comments of @Link, Bluestar, Mpower and Pontio at pp. 11-12 (April 26, 2000)

[37] *BANY Order* at ¶ 291.

reconnecting the loop at the competing carrier's collocation space.[38] The customer is taken out of service while the hot cut is in progress, thus, coordination between the BOC and the competing carrier is critical. If the hot cut is not correctly provisioned the cutover could result in extended service disruption for the customer.[39]

Deficiencies in hot cut performance will impose costs on the CLEC, try the end user's patience and provide competitive benefits to the ILEC. According to a survey conducted by the Competition Policy Institute, the "[s]trongest impediment to switching [LECs] comes from concern about service interruptions during the change over."[40] Thus, ILECs have a perverse disincentive to provide lower quality service in regard to hot cuts, at least up to the boundaries that the Commission's "minimally acceptable standards" will provide. One of the key issues in the appeal by AT&T Corp. and Covad Communications of the *Bell Atlantic New York Order* is that the Commission set the bar too low in regard to hot cut performance by failing to focus the performance

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[38] *BANY Order* at ¶ 291, fn. 925.

[39] *Id.*

[40] Evaluation of the United States Department of Justice, *In re: Application of New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in New York,* CC Docket No. 99-295 (November 1, 1999), p. 18, n. 39.

standards on what is technically and commercially feasible for the ILEC.[41] For instance, the standards in the *Bell Atlantic New York Order* already constituted a departure from performance standards that the New York Public Service Commission, and Bell Atlantic itself, felt were capable of being achieved.[42] As noted by AT&T, ILECs have every incentive to perform down to the standard, *i.e.*, allow as many outages as it can consistent with regulatory requirements.[43]

The evidence in recent Section 271 applications suggest this is the case. Bell Atlantic's performance constituted the minimally acceptable showing, [44] and as the Department of Justice noted, "SBC's performance with regard to 'hot cuts' is worse than Bell Atlantic's performance in New York, which the Commission concluded was 'minimally acceptable.'"[45]

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[41] *See* Brief for Appellants AT&T Corp. and Covad Communications Company at pp. 43 to 49, *AT&T Corp., et al., v. Federal Communications Commission* (No. 99-1538)(D.C. Cir)(Appellants argue that substantially better performance standards were "technically feasible" in comparison to those the FCC found minimally acceptable).

[42] *Id.* at p. 48. For instance, the NY PSC had set a minimum standard of 95 percent on-time performance, not the 90% standard eventually established. *Bell Atlantic New York Order* at ¶ 292.

[43] *AT&T SBC 271 Comments*, p. 28.

[44] *BANY Order* at ¶ 309.

[45] CC Docket 00-65, February 14, 2000 Evaluation of the United States Department of Justice, p. 27.

The Commission should set a time standard for hot cuts and not lower the bar any more in regard to hot cut performance. If the Commission lowers the standard for hot cut performance, it rewards BOCs for underperforming, and it gives incentive to BOCs to push the envelope and try to lower the standards even more. The FCC has recognized that hot cut performance is vital not only to competitive carriers, but the public at large because failure in this area leads to loss of, or disruption to, service.[46]

D. Maintenance and Repair

As the Commission noted in its Memorandum Opinion and Order granting Section 271 authority to Bell Atlantic "[a] competing carrier that provides services through resale or unbundled network elements remains dependent upon the incumbent LEC for maintenance and repair."[47] Indefinitely unresolved maintenance and repair problems materially impair the ability of a requesting carrier to provide the services it seeks to offer in the local telecommunications market. Unless the Commission adopts rules for the escalation of trouble tickets, such tickets will have the potential to frustrate any rules the Commission may adopt in this proceeding.

In order to compete effectively in the local telecommunications marketplace a CLEC must be able to obtain a timely and successful repair of UNEs that are not performing properly.

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46 *BANY Order* at ¶ 309.

47 *BANY Order* at ¶ 212.

Generally, when UNEs are not performing properly, CLECs will submit a "trouble ticket" to the ILEC in order to obtain repair of the improperly performing UNEs. However, DSLnet experiences a range of problems in obtaining timely and successful repairs of UNEs.

DSLnet is frequently unable to obtain any response to trouble tickets. In addition, trouble tickets are often prematurely closed, even if the customer is still out of service, because the ILEC technician is unable to find a problem in the location to which the ILEC dispatched the technician. Frequently, there is repeated trouble on the same customer line resulting in the customer repeatedly suffering through several days of either no service or, at best, intermittent service. DSLnet is required to open a new trouble ticket each time. When CLECs attempt to escalate these problems within the ILEC organization, the CLEC frequently obtains a late response or no response at all.

The inability to obtain timely and consistent repair seriously adversely affects the quality of the new provider's offered services. Consumers will assign blame to the new provider rather than the incumbent. The variety of problems that CLECs experience in attempting to obtain repairs - no shows, closing out the ticket when trouble continues, repeated failures, unresponsive repair managers - shows the need for rules governing ILEC repair procedures.

For these reasons, the Commission should establish repair performance metrics and escalation procedures. These escalation standards below should apply to customer outages occurring with services UNEs including loops, transport, UNE-P, and resale services. For hot cuts, CLECs

should be updated hourly on the status of correction of service problems. Also, the CLEC and ILEC should have the option of agreeing to different escalation schedules in specific situations. It is important that these rules function automatically without imposing administrative and regulatory burdens on competitors.[48] Specifically, DSLnet proposes that the Commission adopt the following rules:

- If trouble occurs within network elements provided the ILEC, the CLEC will first determine whether the trouble is in the CLEC's own equipment and/or facilities or those of the End User. If the CLEC determines the trouble is in the ILEC's equipment and/or facilities, the CLEC will issue a trouble report to the ILEC via the ILEC's electronic interface.

- If trouble ticket remains open after 4 hours, the ILEC will proatively escalate the trouble ticket to a first line supervisor. Such supervisor will provide the CLEC with an Action Plan to the resolve trouble within the next 4 hours.

- If trouble ticket remains open after 8 hours, the ILEC will proatively escalate the trouble ticket to a Manager. Such Manager will update the CLEC within 12 hours after a trouble ticket is opened with an action plan to resolve trouble.

- If trouble ticket remains open after 12 hours, the ILEC will proactively escalate the trouble ticket to the Director level. Such Director will update the CLEC within 16 hours after a trouble ticket is opened with an action plan to resolve trouble. At this

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[48] The Commission made this very point in the *Bell Atlantic §271 Order* when discussing the performance assurance plans adopted by the New York Commission. *See BANY Order* at ¶12.

time the CLEC may request hourly updates from the ILEC. This will allow the CLEC the ability to better address our end users concerns.

- If trouble ticket remains open after 24 hours, ILEC will proactively update the trouble ticket to a Vice President. Such Vice President update the CLEC and agree to a same day vendor meet at location(s) necessary to resolve trouble with 8 business hours.

- All trouble ticket will remain open until ILEC , through the same electronic interface used to submit the trouble ticket, notifies CLEC that trouble ticket has been resolved, and CLEC within 8 hours confirms resolution or denies resolution. If the CLEC denies resolution, the ILEC will continue resolution of the original ticket; the ILEC will be prohibited from requiring the CLEC to open a new trouble ticket in such instances.

Establishment of these federal rules for resolution of trouble tickets will further the goals of the Act, promote the rapid development of competition and bring the benefits of competition to the greatest number of consumers.

III. ACCESS TO COPPER IS ESSENTIAL TO COMPETITIVE DEPLOYMENT OF ADVANCES SERVICES

DSLnet supports ALTS call for the Commission to act to ensure that unbundled copper facilities remain available to competitive advanced services providers. Without Commission intervention, the emerging boom of competition for advanced services will be threatened by various ILEC plans that will reduce or eliminate competitive access to copper facilities in numerous markets

throughout the country.

The preservation of competitive access to copper would not impinge upon the ILECs' ability to modernize and expand their network infrastructures or their ability to compete and innovate in the advanced services market. On the contrary, in many cases access could be assured if the ILECs were simply required to ameliorate copper shortages by agreeing to "swap" loops by moving an existing service to fiber in order to free copper facilities. DSLnet urges the Commission to establish a rule mandating that ILECs offer such swapping whenever it is technically feasible.

IV. THE COMMISSION SHOULD REQUIRE ILECs TO CONDITION LOOPS IN A TIMELY MANNER AND ACCORDING TO FORWARD LOOKING PRICING PRINCIPLES

A. The Commission Should Require ILECs to Condition Loops In A Timely Fashion.

DSLnet, a facilities-based provider of advanced services, including DSL services, has a heightened interest in seeing the Commission set mandatory federal standards for the conditioning of loops. As noted in ALTS' Petition, UNE loops are the cornerstone of a competitive telecommunications services marketplace, yet CLECs remain dependent on their ILEC competitors for timely, non-discriminatory access to UNE loops.[49]

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[49] *See* ALTS Petition, p. 7.

Existing copper loops used to provide advanced services have historically been used by ILECs to provide traditional voice telephone service, and have frequently been encumbered by various devices designed to enhance the loops' ability to provide those voice services. While these encumbrances, which include load coils, low pass filters, bridged tap, repeaters and similar devices, can enhance the quality of voice transmission, they generally preclude the deployment of DSL, either on a stand-alone basis or in conjunction with voice service, to the customer served by that loop. As a result, unless the encumbrances are removed from the loop, advanced services cannot be provided using that loop, and customers will be deprived of the efficiencies and benefits offered by advanced services.

To ensure that the benefits of competitive advanced services are available to all Americans, the Commission requires ILECs to remove the encumbrances from the loop, even if the ILEC itself does not intend to offer DSL services to the customer on the loop.[50] But if the requirement that ILECs condition loops is to truly encourage competition, the Commission must require that ILECs not only condition loops, but condition them in a timely fashion. The lack of a nationwide provisioning standard has allowed ILECs to provide loop conditioning services in an unreasonably slow fashion, thus slowing the introduction of competitive advanced services throughout the nation.

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[50] *Id.*

Since the ILEC is both the sole provider of loops and a competitor providing advanced services, it is not surprising that ILECs do not condition loops in a timely fashion. If the Commission does not act promptly to require ILECs to condition loops according to a federally mandated standard, the ILECs will continue to slow roll the deployment of advanced services by simply taking their time to condition loops. The result will be to ultimately eliminate competition for advanced services by rendering the ILEC in a particular market the only viable provider of advanced services. DSLnet requests that the Commission require ILECs to provide conditioned loops within a few hours of a CLEC request. This will assure timely provision of loop conditioning. It is also feasible for the ILECs to provide.

B. The Commission Should Require That ILEC Loop Conditioning Costs Be Consistent With TELRIC Pricing Principles

As important as it is for ILECs to condition loops in a timely fashion, prompt conditioning would be a hollow victory for a CLEC that cannot afford an ILEC's inflated loop conditioning charges. Not surprisingly, the Commission has recognized that the charges an ILEC will seek to impose to condition copper loops are likely to pose substantial barriers to entry, and could deny consumers the benefits offered by advanced services. Specifically, the Commission has stated:

> [w]e recognize, however, that the charges incumbent LECs impose to condition loops represent sunk costs to the competitive LEC, and that these cost may constitute a barrier to offering xDSL services. We also recognize that incumbent LECs may *have an incentive*

to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits.[51]

In an effort to avoid the impediments to a pro-competitive marketplace that would result if an ILEC were permitted to impose inflated charges on its competitors, the Commission has assigned state Commissions the responsibility to review the rates that an ILEC proposes to charge for UNEs such as conditioned loops, and to ensure that those charges comply with the Commission's pricing rules.[52] The Commission has also charged the states to ensure that ILECs do not misuse the Commission's loop conditioning "measures for anti-competitive purposes."[53]

The Commission's concern that ILECs would act in an anti-competitive fashion and seek to impose inflated, anti-competitive loop conditioning charges on their competitors is well-placed. Today, across the United States, CLECs are being met with proposals for ridiculously overstated loop conditioning charges. Notwithstanding the Commission's mandate that loop conditioning charges comply with forward looking pricing principles, the rates in several states are so outrageous that it often makes more sense for a CLEC to choose not to serve the market than it does to pay the

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[51] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-96, Third Report and Order and Fourth Notice of Proposed Rulemaking, Commission 99-238 (rel. Nov. 5, 1999) (*UNE Remand Order*), ¶ 194. (Emphasis supplied).

[52] *Id.*

[53] *Fourth Report and Order*, ¶ 86.

ILEC's inflated loop conditioning rates. The Commission should take immediate steps to halt this unfortunate (but predictable) outcome by affirmatively requiring states to prohibit ILECs from charging more to condition loops than is allowed by the Commission's forward looking pricing rules.

The urgency of this matter cannot be understated. For example, a simple comparison of the interim rates adopted the Texas Public Utility Commission (Texas PUC) and the rates adopted by the Connecticut Department of Public Utilities (Connecticut DPU) in a Draft Decision last week illustrates the urgency of this matter. In each instance, though the ILEC is owned and controlled by the same company, SBC, the loop conditioning rates bear no relation to one another and are not justified by meaningful differences in the markets at issue. The chart below illustrates this point by highlighting the rates set by the Connecticut DPU to condition a loop over 17, 5000 feet in length[54] and the rates set by the Texas PUC [55] to condition a loop over 18,000 feet in length.

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[54] *See* Draft Decision, DPUC Review of the Southern New England Telephone Company's Studies of Unbundled Network Elements Non-Recurring Charges, Docket No. 00-03-19 (rel. June 14, 2000), attached as Exhibit 1. The Connecticut DPU's Draft Decision is subject to change based on exceptions and oral argument is set for June 23, 2000. Though not final, the Draft Decision shows the direction in which the Connecticut DPU is leaning, thus underscoring the urgency of Commission action to standardize loop conditioning rates and practices across the country.

[55] *See* Arbitration Award, Docket Nos. 20272 and 20226 (rel. Nov. 1999), pp. 98-102, attached as Exhibit 2. The interim Texas rates are subject to refund or surcharge upon approval of permanent rates, and SWBT was ordered to submit TELRIC-based loop conditioning cost

	Connecticut Draft Decision Rates	Interim Texas Rates
Removal of Repeater	$1,256.62	$16.25
Removal of Bridge Tap	$1,935.34	$24.46
Removal of Load Coil	$1,470.37	$40.55

DSLnet emphasizes that the Commission's specific guidance is needed is with respect to the conditioning of loops less than 18,000 feet in length. Since the Commission has specifically recognized that encumbering devices serve no purpose on loops of 18,000 feet or less,[56] the Commission should make clear that ILECs may not charge CLEC to condition loops under 18,000 feet. Bell Atlantic's CLEC Handbook, which sets the ground rules for CLECs operating in Bell Atlantic's Connecticut service territory (in addition to other service areas), states that ADSL loops that are less than 18,000 feet "shall be non-loaded"[57], while in Connecticut, the Southern New England Telephone Company charges to condition loops between 12,000 and 18,000 feet, but not less than 12,000 feet.

These variations are not validated by meaningful marketplace conditions. Rather, they are explained simply by the fact that the Commission's orders regarding the applicability of its forward

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studies.

[56] *UNE Remand Order*, ¶ 172; *see also Fourth Report and Order*, ¶ 82.

[57] *See* Bell Atlantic CLEC Handbook, Vol. III, § 2.3.5.1 (at http://www.bellatlantic.com/wholesale/html/handbooks/clec/volume_3/c3s2_3.htm).

looking pricing rules to loop conditioning is confusing and unclear. The Commission should promptly explicitly hold that loop conditioning charges adhere to TELRIC pricing principles as a matter of law.

V. THE COMMISSION SHOULD ESTABLISH A REQUIREMENT THAT CLECs BE ALLOWED TO ORDER ALL LOOPS IN A MANNER THAT WILL ENABLE CLECs TO IMMEDIATELY PROVIDE SERVICE AT THE TIME THAT THEIR COLLOCATED EQUIPMENT BECOMES OPERATIONAL

In its Petition, ALTS notes that one of the most severe obstacles to CLECs obtaining loops in a timely manner is the ILEC ordering process which prohibits CLECs from ordering loops until collocation has been completed.[58] ALTS, therefore, seeks a Commission ruling making clear that CLECs in any region may order all loops in a manner that will enable them to provide service at the time that their collocated equipment is operational.[59] DSLnet fully agrees with ALTS regarding the magnitude of this problem and supports ALTS' request that the Commission require ILECs to provision UNEs contemporaneous with provisioning collocation.

In the *Collocation Order*, the Commission recognized the significant competitive harm suffered by CLECs whose collocation space is not ready for as long as 6 to 8 months after their

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[58] ALTS Petition at 9.

[59] *Id.*

initial collocation request is submitted to an ILEC.[60] This competitive harm is increased when CLECs, finally able to complete collocation, then experience additional delays in obtaining UNEs. As noted by ALTS, ILEC literature indicates that the guideline for provisioning DS-1 loops is 45 days.[61] Under these present conditions, collocation provisioning and UNE provisioning can take more than 9 months, making it is virtually impossible for CLECs to roll out competitive services to consumers in a timely manner.

In the *Collocation Order*, the Commission concluded that ILECs cannot refuse to consider an application for collocation space submitted by a competitor while that competitor's state certification is pending, or before the competitor and ILEC have entered into a final interconnection agreement.[62] For the same reasons, the Commission should now conclude that ILECs cannot refuse a competitor's order for UNEs before completion and turnover of collocation facilities. CLECs should be able to install equipment and obtain loops in the shortest timeframe possible with minimum downtime. Unnecessary delays substantially increase administrative and financial burdens on CLECs, who are forced to adjust internal provisioning plans and customer orders for service.

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[60] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), *recon pending* ("*Collocation Order*").

[61] ALTS Petition at 9.

[62] *Collocation Order* at ¶ 53.

Meanwhile, the ILECs are able to plan and rollout services in the same markets without incurring similar delays. Again, such results are contrary to the pro-competitive, non-discriminatory goals of the 1996 Act.

VI. THE COMMISSION SHOULD ESTABLISH FEDERAL PENALTIES FOR ILEC NONCOMPLIANCE

DSLnet fully agrees with ALTS suggestion that the Commission adopt federal penalties for ILEC failure to comply with the provisioning rules.[63] In addition to ALTS suggestions, DSLnet further proposes that penalties should consist of the waiver of some, or all, non-recurring charges related to the provisioning of the collocation space and UNEs. Furthermore, the Commission should mandate a reduction in rates that an ILEC charges for UNEs. The amount of the penalty should be directly related to the length of the delay. DSLnet believes that these penalties would be an efficient, effective and necessary measure.

DSLnet recommends that the Commission make enforcement of the rules adopted in this proceeding requiring contemporaneous collocation and UNE provisioning a priority for the newly formed Enforcement Bureau. Complaints regarding compliance are suitable for review under the Commission's "Rocket Docket" procedures. The Commission should allocate sufficient resources to permit the timely review of provisioning complaints. Adopting a policy of enforcing

[63] ALTS Petition at 31.

contemporaneous collocation and UNE provisioning will help ensure that ILECs are provisioning loops in a non-discriminatory, efficient manner. Alternatively, the Commission could permit the states to enforce these penalties.

VII. CONCLUSION

For the reasons stated above, DSLnet urges the Commission to establish a federal standard for each stage of the loop provisioning process so that the pro-competitive provisions of the Telecommunications Act can be implemented and the American consumer can reap the benefits of competition.

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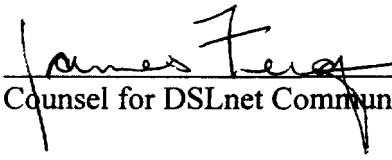

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I, Joan C. Hall, hereby certify that on this 23rd day of June 2000, copies of the foregoing Comments of DSLnet Communications, LLC were delivered by hand to the following:

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